NOTE

This Microfiche meets the quality requirements of the American National Standard for Microfiche of Documents (ANSI PH5.9-1975). However, because of imperfections in the document from which it was made, it contains images that are illegible or difficult to read. The source document for this microfiche is the best copy that could be obtained prior to filming.

CIS Congressional Information Service Washington, D.C.

S. HRG. 100-1044

LEGISLATION TO IMPLEMENT THE GENOCIDE CONVENTION

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

S. 1851

A BILL TO IMPLEMENT THE INTERNATIONAL CONVENTION ON THE PREVENTION AND PUNISHMENT OF GENOCIDE

FEBRUARY 19, 1988

Serial No. J-100-48

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE

93-383 WASHINGTON : 1989

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

S521-32

COMMITTEE ON THE JUDICIARY

JOSEPH R. BIDEN, JR., Delaware, *Chairman*

EDWARD M. KENNEDY, Massachusetts
ROBERT C. BYRD, West Virginia
HOWARD M. METZENBAUM, Ohio
DENNIS DECONCINI, Arizona
PATRICK J. LEAHY, Vermont
HOWELL HEFLIN, Alabama
PAUL SIMON, Illinois

STROM THURMOND, South Carolina
ORRIN G. HATCH, Utah
ALAN K. SIMPSON, Wyoming
CHARLES E. GRASSLEY, Iowa
ARLEN SPECTER, Pennsylvania
GORDON J. HUMPHREY, New Hampshire

MARK H. GITENSTEIN, *Chief Counsel*
DIANA HUFFMAN, *Staff Director*
TERRY L. WOOTEN, *Minority Chief Counsel*
R.J. DUKE SHORT, *Minority Staff Director*

CONTENTS

STATEMENTS OF COMMITTEE MEMBERS

	Page
Metzenbaum, Hon. Howard M	1
Kennedy, Hon. Edward M	2, 48
Thurmond, Hon. Strom	3
Grassley, Hon. Charles E	4
Humphrey, Hon. Gordon J	43
Hatch, Hon. Orrin G	46

PROPOSED LEGISLATION

Text of S. 1851—A bill to implement the International Convention on the Prevention and Punishment of Genocide 59

CHRONOLOGICAL LIST OF WITNESSES

Proxmire, Hon. William, a U.S. Senator from the State of Wisconsin 5

Schifter, Ambassador Richard, Assistant Secretary of State for Human Rights, Washington, DC 7

Wiesel, Elie, as read by Hyman Bookbinder, chairman, Ad Hoc Coalition on the Genocide Treaty, Washington, DC 14

Griffin, Joseph, Washington, DC; accompanied by Prof. John F. Murphy, American Bar Association 15

Katson, Trisha, legislative director, Liberty Lobby, Washington, DC; accompanied by Gardiner Rogers, chairman of the board of policy, Liberty Lobby, Washington, DC 27

ALPHABETICAL LIST AND SUBMITTED MATERIAL

Bookbinder, Hyman:
- Testimony 14
- Prepared statement of Elie Wiesel 14

Griffin, Joseph:
- Testimony 15
- Prepared statement 19

Katson, Trisha:
- Testimony 27
- Prepared statement 30

Metzenbaum, Hon. Howard M.: Statement of Amnesty International USA 49

Murphy, Prof. John F.:
- Testimony 16
- Prepared statement 19

Proxmire, Hon. William: Testimony 5

Rogers, Gardiner:
- Testimony 27
- Prepared statement 30

Schifter, Ambassador Richard:
- Testimony 7
- Prepared statement 10

APPENDIX

Correspondence in support of S. 1851:
- National Spiritual Assembly of the Baha'is of the United States 53
- Armenian Assembly of America 54
- The American Jewish Committee 56
- B'nai B'rith International 57

LEGISLATION TO IMPLEMENT THE GENOCIDE CONVENTION—S. 1851

FRIDAY, FEBRUARY 19, 1988

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 10:35 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Howard M. Metzenbaum, presiding.

Also present: Senators Kennedy, Thurmond, and Grassley.

Staff present: Eddie Correia, majority counsel; and Cindi Blackburn, minority counsel.

OPENING STATEMENT OF SENATOR METZENBAUM

Senator METZENBAUM. This is a hearing to consider S. 1851, legislation to implement the genocide convention, and it is a hearing of the Committee on the Judiciary.

I can think of no uglier word in the English language than genocide. The deliberate attempt to destroy a race of people is the most heinous offense recorded in the human history. Two years ago today the Senate ratified the United States membership in the Genocide Convention. Incredible as it seems, the Senate had the convention before it since 1949. Seven presidents from Truman to Reagan urged the Senate to ratify the convention. Yet it required 37 years for the United States to decide to make a moral and legal commitment never to engage in this lowest and most vicious crime.

By ratifying the convention the United States joined the community of nations which have pledged to bar genocide forever. The convention requires that the U.S. commit itself to deter acts of genocide and to punish those who commit this terrible crime.

One essential step is remaining before the United States has fully lived up to this commitment: enacting legislation to provide specific criminal penalties for genocide. Today we are considering S. 1851 which accomplishes that objective. This legislation has been introduced by Senator Biden and cosponsored by Senators Proxmire, Simpson, Kennedy and myself.

An identical bill has been introduced by Congressman Rodino in the House of Representatives. S. 1851 defines the crime of genocide and provides for severe criminal penalties for those who commit this horrible offense. I want to thank Senator Biden, for his agreeing to my conducting this hearing in his absence, and I might say publicly we are hoping that he will soon be well and back with us.

Our thoughts are with him as he recuperates from his recent surgery, and we look forward to seeing him soon. We have a distinguished panel of witnesses today. I look forward to hearing their testimony. I am hopeful the committee will promptly approve this legislation and send it to the full Senate for action. It took far too long for this country to say to the world we join in condemning genocide. It would be a tragedy and an affront to those who have themselves been victims of genocide to fail to make the convention fully effective.

Before I turn it over to my colleague, Senator Kennedy, I just want to say that this ratification process and the legislation really ought to be known as the monument to Senator William Proxmire. William Proxmire stood on the floor of the Senate every single day—I do not know how many years it was—but every day addressed himself to our obligation to ratify the treaty.

And I hope there is no cause and effect, but he has now indicated publicly he is going to be leaving the Senate. I hope it is not because he feels all of his responsibilities are concluded once the Genocide Treaty has been ratified. But no person was more dogged, more resolute, more public spirited than he. And I am so pleased that he is with us here this morning. And we look forward to hearing from him.

First, let us hear from Senator Kennedy.

Senator KENNEDY. Thank you very much, Mr. Chairman.

Let me join with you in saying a special thanks to Senator William Proxmire who deserves high praise for his efforts to bring about Senate ratification of the Genocide Convention. He deserves much of the credit for the Senate approval of that Convention—between January 11, 1967 and Senate approval of the treaty two years ago, Senator Proxmire spoke in favor of the Genocide Convention every single day the Senate was in session—roughly 3,000 times. We all commend his dedication to this important cause and thank him for this tireless efforts. We all appreciate the extraordinary leadership he has provided on this issue—and so many others. We are a better country and a better land because of that leadership.

This morning the Judiciary Committee takes an important step toward bringing the United States into the family of nations committed to combating one of the worst evils of our time—genocide. I am pleased to join with my colleagues on the Committee in supporting this important legislation and urge swift and positive action on it.

This year marks the 40th anniversary of the unanimous adoption by the General Assembly of United Nations of the Genocide Convention—and of the signing of that document by the United States. Ninety-seven countries have now ratified that Convention. Governments which are conservative, liberal and Communist have joined together in this strong condemnation of the appalling crime of genocide. Canada, Mexico, Eastern and Western European countries, China and the Soviet Union, Chile and Paraguay are party to the Convention.

Regrettably and inexcusably, the United States has yet to join these other nations in full support of the Genocide Convention. Every President since Truman has urged ratification of the Con-

vention. Every charge put forward by the opponents of ratification by the United States has been answered, every concern about protection of the Constitutional rights of our citizens has been addressed. The Convention has withstood the excesses of the McCarthy era, weathered the charges of the right wing and waited out the Senate filibusters.

Two years ago today, the Senate approved the Genocide Convention by an overwhelming vote of 83-11. That Senate action took into full consideration the concerns of all members—on the left and on the right. In its Resolution of Ratification, the Senate incorporated a total of eight provisions to accommodate the various concerns raised by Members—two reservations, five understandings and one declaration. Surely, we have addressed the legitimate concerns of the American people regarding this Convention. We have delayed, deliberated and debated too long in enacting this implementing legislation.

The bill before us is quite straightforward. It simply defines the penalties applied to anyone found guilty of genocide, attempted genocide or of inciting genocide. This legislation was embodied in the Genocide Convention itself which requires parties to the Convention to punish—according to their own laws—individuals who commit genocide. To date, the United States has no such penalty. This legislation make genocide a crime and sets an appropriate punishment for anyone guilty of that heinous crime.

The United States can delay no longer in becoming a full party to the Genocide Convention. Our failure to implement the Convention has damaged our moral standing among nations and hindered our efforts to pressure other governments to respect human rights and obey the rule of law. We would be better positioned to defend and protect the rights of the Baha'is in Iran, the Miskitos in Nicaragua and the people of Cambodia were we to ratify this Convention. Enactment of this legislation is in no way just a symbolic gesture—in order to protect and advance human rights throughout the earth, we must be a full partner in the efforts of the international bodies to promote the values upon which this nation is founded.

Let me join with Senator Proxmire and my colleagues in urging the Committee to approve this critical—and long overdue—legislation.

Senator METZENBAUM. We are pleased to have the distinguished ranking member of this committee with us, Senator Strom Thurmond.

Senator THURMOND. Thank you, Mr. Chairman. Mr. Chairman, I am pleased to be here today for the full committee hearing on S. 1851 which provides the legislation necessary to implement the International Convention on the Prevention and Punishment of Genocide.

On February 19, 1986, the Senate gave its advice and consent to the ratification of the Genocide Treaty. Article V of the treaty requires a party to enact legislation to make genocide a crime within its own borders. This bill would create criminal penalties for persons who commit genocide.

Further, in giving consent to this treaty, the Senate specifically provided that the President could not transmit the treaty until

after the implementing legislation was passed. Therefore, passage of this legislation is the final step necessary for the United States to become a party to the treaty.

Let me make it clear that I vigorously oppose genocide in any form whatsoever. However, I voted against ratification of this treaty in 1986 because I had two major concerns about the treaty. First, I was concerned that the treaty, while covering national, ethnic, racial and religious genocide, does not cover political genocide. Second, I expressed concern that a person accused of genocide may be extradited to a foreign country and tried there without the constitutional protections afforded citizens of the United States.

When the Senate gave its advice and consent to the treaty, several reservations and understandings were also passed in order to clarify the intent of the United States in becoming a party to this treaty. These conditions were an attempt to address the concerns raised by myself and others. Further, after the Senate considered the treaty, a sense of the Senate resolution was passed which provided that when the President transmits the treaty, he must also seek an amendment to cover political genocide. While I believe that the conditions and the resolution were good faith attempts to address concerns that were raised, they were insufficient to solve serious concerns regarding the treaty.

In closing, I reiterate that genocide is a despicable act which should not be tolerated in any form on the face of the earth. With these views in mind, I look forward to hearing the testimony that will be presented today.

Senator METZENBAUM. Thank you very much, Senator Thurmond.

Senator Grassley.

Senator GRASSLEY. Thank you, Mr. Chairman. I appreciate this opportunity that we have today to examine the legislation to implement the Genocide Treaty. We all know that this treaty was overwhelmingly approved by the Senate, and I happened to be one of those along with Senator Thurmond who were the few, or very few, who opposed the treaty.

Now there is no question that I strongly supported the treaty's admirable intention of preventing and punishing the atrocity of genocide. It was, obviously, difficult to oppose a treaty that attempted to prevent another Holocaust. We all shared and still share this purpose.

However, I oppose the treaty because I believe it forces the United States into ambiguous international commitments. The potential impact of these commitments on U.S. domestic law is unclear at this time. In addition, the treaty is silent on one of the basic forms of genocide, political oppression that has been referred to by Senator Thurmond.

Consequently, genocidal acts are taking place today despite the fact that the treaty is in force in much of the world. For the last 8 years, we have witnessed a Soviet attempt to destroy Afghanistan and its people even though the Soviets have ratified the treaty.

Other glaring episodes exist including the Cambodian holocaust. So in practical terms, the convention will unfortunately do little to prevent the heinous crime of genocide. Notwithstanding this fact, the proponents of the treaty argue that the United States must

make a symbolic stand so that the rest of the world can no longer ridicule us for not ratifying the treaty.

In my view such a symbolic act pales against the active, tangible steps that the United States has taken against these criminal acts over the past several decades. Nevertheless, it is not my intention to reargue the merits or the demerits of the Genocide Treaty. On the other hand, I think we need to consider very carefully any implementing legislation. And this hearing is the beginning of that process.

After all, the treaty is not self-executing, and therefore, any implementing legislation must be closely scrutinized. In my brief review of the legislation, I do see some potential problems. I do not think there is any question that the legislation should closely track the treaty language including the so-called sovereignty package that was adopted to protect U.S. interests.

In Section 1091(a), I see that the term "intent" instead of the proviso term "specific intent," has been used. I will be offering or supporting an amendment to correct this oversight. Other language also needs further consideration.

I welcome our distinguished witnesses, and I look forward to their discussion. I am somewhat surprised, though, Mr. Chairman, that we do not have a Justice Department representative here today since this legislation does amend our criminal code. And I understand that the department will be submitting materials in writing to this committee.

But I think it is necessary, perhaps at a later date, to have someone from the department before us to discuss their views. I thank you, Mr. Chairman.

Senator METZENBAUM. I thank you, Senator Grassley. Our first witness, Senator William Proxmire. We are very happy to have you with us, and as I have already indicated, we are all very grateful to you for your leadership on this issue.

STATEMENT OF THE HON. WILLIAM PROXMIRE, A U.S. SENATOR FROM THE STATE OF WISCONSIN

Senator PROXMIRE. Thank you very much, Mr. Chairman, Senator Thurmond, Senator Grassley. I deeply appreciate the action by Chairman Biden in calling this hearing on legislation implementing the Genocide Convention. Without this implementing legislation, the ratification of the Genocide Treaty 2 years ago by a smashing 83 to 11 vote is nothing but an empty gesture. That treaty ratification carried with it an understanding that the President could not deposit the treaty to make our support of the treaty effective until the Congress, that is the House and Senate, had passed implementing legislation and the President had signed it into law.

Mr. Chairman, the Genocide Treaty is in a very real sense our United States initiated treaty. It is true that the term "genocide" was coined by a remarkable Polish Jew named Raphael Lempkin who later became a United States citizen. This man lost some 50 members of his family in Hitler's Holocaust. After World War II, Lempkin urged American delegates at the United States to draft a treaty making genocide an international crime.

Our American officials agreed. President Harry Truman championed the treaty, and signed it 40 years ago. So this was very much our American initiated treaty. The treaty came to the Senate in 1949, and to the shame of this great body, the Senate took 37 long years to ratify it although President after President after President, as you have said so well, called for its ratification.

Now it has taken nearly 2 years to get the implementation process going. But thanks, Senator Metzenbaum, very largely to your diligence, we at long last are proceeding through the final process of passing implementing legislation.

Why is it so important that the United States take this essential definitive action? There are two major reasons. First, America is the leader of the free world in human rights, and we are very proud of that. This is exactly why it was so fitting that the United States played such a big role in initiating the Genocide Treaty as a great human rights document. After all the supreme sanctity of individual human life lies at the heart of human rights.

There is no more monstrous crime against human rights than the genocide that would destroy innocent human lives, not because the victims of genocide had done anything wrong, but because they happened to worship God in their own way, or they happened to belong to a certain ethnic or racial or national group.

The Genocide Treaty recognizes that this most vicious of all crimes has persisted throughout human history. The Genocide Treaty makes genocide an international crime for the first time. The United States should lead the way in making it internationally effective by passing the implementing legislation.

Secondly, we should apply the international criminalization of genocide to our own country. Some senators have said forget it. It is unnecessary. They argue it cannot happen here. Well, maybe it never will happen here, but xenophobia, the hatred of those who are different; extreme and brutal racism; and ultimately, the terrible crime of genocide have come to countries inhabited by good people in Europe, in Asia, in Africa and elsewhere.

It could infect even this good and great country. How do we prevent it? In our country, we take great pride in our status as a nation of laws, not of men. In America, no one is above the law, not the wealthiest, not the most powerful member of the Congress, not the President of the United States.

Genocide is a crime that is almost always perpetrated by government. We love our country, but we know that here in America as elsewhere government officials, including the very top government officials have, on occasion, violated the law. They have been prosecuted. They have been punished.

Here is precisely why we should carefully define the crime of genocide. The proposed statute before the committee does that in meticulous detail. We should specify the punishment for genocide. The genocide measure before you does that, too.

Chairman Metzenbaum, there has been intense criticism of Austrian President Kurt Waldheim recently. Why? Because he now admits that he knew Hitler's systematic extermination of millions of European Jews was underway, and admits he did nothing about it. We have barred Waldheim from the United States for his indifference to Hitler's genocide. Whether the Congress does or does not

take action on this treaty will show whether we are doing what we can to prevent genocide or whether we are pursuing the Waldheim strategy of indifference, of doing nothing to help advance international law to prevent this monstrous crime.

In enacting this implementing legislation, we significantly diminish the prospect of the genocidal destruction of human beings anywhere on earth. This is why we should promptly pass the bill before this committee implementing the Genocide Treaty. Thank you, Mr. Chairman.

Senator METZENBAUM. Thank you very much, Senator Proxmire. While you are present, I have mentioned your leadership role, and I repeat that. But I would like doff my hat to one other member of the Senate without whom this matter, this Genocide Treaty, would not have been ratified, and that is Senator Dole because I remember when there was the dedication of the Holocaust Memorial or the breaking of ground.

And I sat behind him or next to him and said to him it would be a great day for you to commit yourself to the ratification of the Genocide Treaty in this session of Congress, and he said I will do it. And he did that publicly; then we worked together in connection with the passage of the measure. There were those who were opposed totally. There were those who insisted upon no reservations or understandings or declarations. But he was extremely helpful, and I just want to say publicly that without him there might have been another 40 years before——

Senator PROXMIRE. I agree wholeheartedly. I think Senator Dole certainly played a very important part in this. President Reagan, after all, was the person who called on the Senate for ratification and did it successfully.

Senator METZENBAUM. That is correct.

Senator PROXMIRE. And I might add that Senator Simpson, the Assistant Republican Leader, is a cosponsor of this legislation.

Senator METZENBAUM. Yes, he is.

Senator PROXMIRE. And has pushed very, very hard for it, and pushed hard for the ratification of the legislation.

Senator METZENBAUM. Thank you very much, Senator Proxmire. Any questions, Senator Thurmond?

Senator THURMOND. No questions.

Senator METZENBAUM. Senator Grassley?

Senator GRASSLEY. No.

Senator THURMOND. We are glad to have you with us.

Senator METZENBAUM. Thank you very much, Senator Proxmire.

Senator PROXMIRE. Thank you, gentlemen, very much.

Senator METZENBAUM. We are very grateful to you.

Ambassador Schifter, we are happy to have you with us. I was told we had to get you on before 11 o'clock. You have to leave, and I am glad we met the time table, and we are extremely pleased that you are with us here today.

STATEMENT OF AMBASSADOR RICHARD SCHIFTER, ASSISTANT SECRETARY OF STATE FOR HUMAN RIGHTS, WASHINGTON, DC

Mr. SCHIFTER. Thank you, Mr. Chairman.

Senator METZENBAUM. I would say to all of the witnesses that I would hope that you would not see fit to read your entire statements, but we will put all of the statements in their entirety in the record. But if you could be relatively direct, we would appreciate it.

Mr. SCHIFTER. Mr. Chairman, I am prepared to submit my statement for the record and simply to point out that the administration is in support of S. 1851. I offer one particular quote from my statement.

> We, therefore, sincerely hope that Congress will soon complete the ratification process by enacting legislation implementing the Genocide Convention. In this context, we need to note that the Department of Justice intends to submit a letter to you shortly, supporting enactment of S. 1851, but recommending certain amendments, including a provision that capital punishment be available as a sanction for genocide.

Beyond that, Mr. Chairman, I simply want to say that all the statements that can be made in support of the proposition that S. 1851 ought to be passed have been made here. The crime of genocide has been aptly described by you, by other members of the committee as well as by Senator Proxmire. So there is very little that I can add other than simply to say that my statement ought to be in the record to confirm the administration's position on it.

Senator METZENBAUM. As you well know, your support is very meaningful to us, and we are very appreciative the administration is supportive. We will look forward to the Justice Department letter, hoping that it does not inject any items that are too controversial that we cannot work with because we would like to be able to pass this during this session of Congress.

I and some of the other members of the committee may have some questions for you, Mr. Ambassador. And if we do, I assume you would be pleased to answer them if we sent them to you in the mail

Mr. SCHIFTER. Fine.

Senator METZENBAUM. Senator Grassley, do you have any questions?

Senator GRASSLEY. Could I ask a question?

Senator METZENBAUM. Surely.

Senator GRASSLEY. How will the legislation be enforced, and specifically I am concerned about the role that the international tribunal is going to be play in its enforcement? And I believe that is under Article VI of the treaty.

Mr. SCHIFTER. I would suggest, Senator, that questions of this kind be directed to the Department of Justice. You indicated before that that would be the appropriate agency to deal with such questions.

Senator GRASSLEY. Okay. Will we be having the Department of Justice here?

Senator METZENBAUM. They did not request to testify. We would be very happy to have had them if they had wanted to testify, but they said they intend to submit a statement. And I gather from the Ambassador that that will be shortly forthcoming.

Mr. SCHIFTER. I suppose the question could be posed to them, and they would then respond to it.

Senator GRASSLEY. Let me ask you then on another one. How will the penal tribunal be set up, and how do you anticipate that it will work?

Mr. SCHIFTER. Again, Senator, this is the kind of question that should be directed to the Justice Department. I am prepared to answer it, but I would rather that the department directly responsible for these matters take responsibility for that.

Senator GRASSLEY. That is all the questions I have.

Senator METZENBAUM. Thank you very much, Senator Grassley.

Senator GRASSLEY. Somewhere along the line I want to get answers to these questions.

Senator METZENBAUM. I would suggest that either your staff discuss with my staff who I think is prepared to address themselves to some of the questions, or probably in a more meaningful way, perhaps a letter to the Attorney General might suffice.

Senator GRASSLEY. Are you suggesting, then, that this will be the only opportunity for a hearing that we are going to have?

Senator METZENBAUM. That was our thought, Senator Grassley.

Senator GRASSLEY. I am not here to argue against that at this point. I guess I thought that we would have everybody here.

Senator METZENBAUM. With the pressure that seems to be on this year, unless there is some special reason—we would have been very happy to have the Justice Department here. They opted not to appear.

Senator GRASSLEY. And I can appreciate that that is not the Chairman's fault. I would probably do the same thing that you did in not begging anymore witnesses than necessary. Would you be open to discussion on it if I feel some need later on?

Senator METZENBAUM. Of course. I would just say this to you that we would hope to move this matter with some dispatch so that if you do have something, I would hope that we could hear from you shortly.

Senator GRASSLEY. Okay.

Senator METZENBAUM. Thank you. Thank you very much, Ambassador Schifter.

Mr. SCHIFTER. Thank you.

[The statement of Mr. Schifter follows:]

Testimony of

Richard Schifter

Assistant Secretary of State
for
Human Rights and Humanitarian Affairs

S.1851
A Bill to Implement the
International Convention on the
Prevention and Punishment of Genocide

Presented to the
Senate Judiciary Committee

February 19, 1988

Mr. Chairman:

Thank you for the opportunity to appear before the Senate Judiciary Committee today and to present the views of the Administration on S.1851, a bill which will implement in the United States the International Convention on the Prevention and Punishment of the Crime of Genocide.

As you know, the Genocide Convention has a long history in Congress. It was signed on behalf of the United States some 40 years ago, a mere two days after the Convention itself was unanimously adopted by the General Assembly of the United Nations. The United States signed this agreement, of course, in the immediate aftermath of World War II, when the repugnant horrors of Hitler and the Holocaust were neither distant memories nor abstract or unfounded fears.

Since that time American Presidents, both Democratic and Republican, have sought ratification of this important Convention, both for substantive reasons, and because of the important international and moral statement that ratification would make to the world. It is for these reasons that the United States took the lead nearly 40 years ago in bringing about the Genocide Convention. Our society and our system of government, after all, are founded on the same moral values which this Convention seeks to protect, namely, the fundamental principles of the dignity of every individual, and respect for every human life.

Four years ago President Reagan renewed this effort, asking the Senate to submit its advice and consent to U.S. ratification of the Genocide Convention. At that time, the President made the following comments:

> "Anyone who has contemplated the horror inflicted on Jews during World War II, the deaths of millions in Cambodia, or the travails of the Miskito Indians in Nicaragua, must understand that if free men and women remain silent in the face of oppression, we risk the destruction of entire peoples. . . .
>
> I want you to know that we intend to use the Convention in our efforts to expand human freedom and fight human rights abuses around the world. Like you, I say in a forthright voice, 'Never again!'"

Two years ago today, the Senate presented to the President and the American people its advice and consent to U.S. ratification of this important international document, thereby announcing that the United States was ready to take its rightful place among the 97 other nations which have formally outlawed the crime of genocide. The Senate's action in

February 1986 provided that the United States not deposit its instrument of ratification until such time as Congress enacts the domestic legislation necessary to implement this international agreement under our laws and Constitution.

We therefore sincerely hope that Congress will soon complete the ratification process by enacting legislation implementing the Genocide Convention. In this context, we need to note that the Department of Justice intends to submit a letter to you shortly, supporting enactment of S.1851, but recommending certain amendments, including a provision that capital punishment be available as a sanction for genocide.

It is, of course, quite true that the United States is hardly likely to see genocide committed within its borders; and the general types of conduct addressed by this legislation are similar to crimes that are already prohibited in this country. But the crime of genocide is unlike any other. It is not merely the killing of another human being, or even of many people. Rather, as described in Article II of the Convention, genocide is the commission of certain acts, "with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group as such."

It is this singular aspect of genocide that makes it so reprehensible, and distinguishes it from other gross violations of internationally recognized human rights. It is the specific malevolent intention to extinguish an identifiable racial, ethnic or religious group of human beings, that makes genocide particularly deserving of the severe criminal penalties specified in this bill. Indeed, it is this inhuman aspect of the crime that has caused it to be the subject of an international convention in the first place.

It is a fact that the world today continues to look to the United States for moral leadership in human rights. In this regard, I will simply say that U.S. implementation of the Genocide Convention is important to the United States and to those throughout the world who do look to this country for leadership and strength in the area of human rights.

It is also important to those groups and individuals who suffer from any type of human rights abuse that the United States fulfill the commitment we undertook when we signed the Genocide Convention, and more recently, when the Senate consented to its ratification: namely, that Congress would enact appropriate legislation to implement the Convention.

Our friends expect no less of us. And for our adversaries, and those who believe that human rights are merely hollow words, S.1851 will eliminate a criticism that is now used to deflect attention from legitimate concerns over their own human rights abuses. These human rights violators have persistently levied unfair charges of hypocrisy or insincerity against the United States, and such criticisms have found their way into a variety of international fora such as the United Nations General Assembly, the U.N. Human Rights Commission, the human rights discussions of the Conference on Security and Cooperation in Europe (the follow-up to the Hel$inki Accords), and other bodies. It is time to put an end to such diversions. It is time for the United States to be able to preach what we already practice.

Genocide invokes particular horrors and revulsion throughout the world. It is only fitting, therefore, that the United States enact this implementing legislation and thus give legal force to our moral convictions; let us now join so many other countries in publicly condemning this heinous affront to humanity.

93-383 O - 89 -- 2

Senator METZENBAUM. Our next witness is the well-known, well-respected and well-liked Hyman Bookbinder, chairman of the Ad Hoc Coalition on the Genocide Treaty, who will be offering a statement on behalf of Elie Wiesel who could not be with us this morning. We are happy to have you, Hy, as always.

STATEMENT OF ELIE WIESEL AS READ BY HYMAN BOOKBINDER, CHAIRMAN, AD HOC COALITION ON THE GENOCIDE TREATY, WASHINGTON, DC

Mr. BOOKBINDER. Good morning, Mr. Chairman. Thank you. I have a very simple role. It will only take a couple of minutes. But I must precede it by saying the following. I join in the applause of all of the Senators who were named by earlier witnesses for their important contribution. I want to add one more name.

And I do it by recalling that about 6 or 7 years ago, after he had already retired from the Senate and was already quite ill, Senator Jacob Javits came to a hearing to support the Genocide Treaty, and without a single piece of paper or note, he made a 10 or 12 minute presentation that was so magnificent, so moving, that it prompted me, sitting next to Senator Proxmire at the time in the audience, to say, "Prox, is there really a law against applauding?" And he said, "No, the hell with it. Let us do it." And we broke into applause and the whole room full of people got up and gave the Senator a 10 minute ovation for the brilliance and the heart that was reflected in that statement.

And all of us know—I know that you know, Mr. Chairman—what a champion he was of ratification of the treaty. I just felt I wanted to add this to the record.

Senator METZENBAUM. We are very pleased to have you do so, and when the matter comes to the floor we will try to make note of that on the floor as well. I think it is very beautiful, very touching, for you to tell us about our colleague who has now left us. He was a champion of many causes, and we all had great respect for him.

Mr. BOOKBINDER. Yes. And had I been sitting next to you this morning, I would have asked you for permission to applaud Senator Proxmire. But you were not there so I did not want to do it on my own.

Let me say now that I appear as the Washington chairman of the Ad Hoc Committee, which is a national coalition of some 60 major national organizations. But primarily, I have the very, very simple, but for me personally a very profound and proud role to read the words of Elie Wiesel, the Elie Wiesel, who clearly has to be and is recognized universally as the prime symbol of the most horrible crime in human history, the Holocaust, and today the most eloquent champion for human rights anywhere in every area around the world.

So let me read this very short statement into the record:

STATEMENT OF ELIE WIESEL

Mr. Chairman, distinguished members of the United States Senate, please forgive my not being able to respond to your kind invitation to appear before you today. It has reached me too late. I simply cannot cancel certain previous commitments.

Your debate is of extreme importance and significance. Though overwhelmingly endorsed by the Senate, the Genocide Treaty is still to receive implementing legislation. Many of us fail to comprehend the reason for the delay. What is at stake is our moral credibility in the world. Naturally, our nation opposes any massacre, but genocide is the ultimate massacre, and thus must be opposed and denounced with force and vigor.

The fact that it has taken so long for the treaty to reach this stage has been an embarrassment to those among us who, as teachers or writers, try to tell the world of our profound commitment to human rights and to the celebration of human dignity.

When the issue was before the Foreign Relations Committee, I had the honor of testifying in its favor. I tried to explain that I am not sure that a Genocide Convention would prevent genocide, but the absence of such a convention would surely be interpreted as an approval of genocide.

Thus, I urge you, distinguished members of the Judiciary Committee, to accelerate the process of implementing the treaty. What is at stake is the future of many nations. What is at stake is our honor as a nation governed by an ancient ethical tradition that proclaims its belief that life is to be celebrated and sanctified—that applies to the life of the individual and of human communities alike. Thank you. Elie Wiesel.

Senator METZENBAUM. Thank you very much, Hy. And thanks to Elie who certainly has become known worldwide as the voice of concern with respect to human rights. We appreciate your making the statement on his behalf. We get two for the price of one. Both of you are well-known champions in this area.

Mr. BOOKBINDER. Thank you, Mr. Chairman.

Senator GRASSLEY. I have no questions, but even though I oppose and voted against the treaty, I still want to compliment you for your leadership in this area because obviously your goals are no different than all of our goals.

Mr. BOOKBINDER. Thank you very much.

Senator METZENBAUM. Our next witness is Joseph Griffin, accompanied by Professor John F. Murphy, speaking for the American Bar Association.

STATEMENT OF JOSEPH GRIFFIN, WASHINGTON, DC, ACCOMPANIED BY PROF. JOHN F. MURPHY, AMERICAN BAR ASSOCIATION

Mr. GRIFFIN. Thank you, Mr. Chairman.

Senator METZENBAUM. Very happy to have you here, both of you.

Mr. GRIFFIN. Mr. Chairman, we will resist the lawyerly temptation to read all of our remarks. You have graciously said they will be in the record.

Senator METZENBAUM. Just remember this is like a summation to the jury. You want to have an impact, so we have a rule around here that it is an inverse ratio, the longer the speech the less impact.

Mr. GRIFFIN. I am aware of that, Mr. Chairman. Thank you very much. Mr. Chairman, I am Joseph Griffin. I have the honor this year to be chairman of the Section of International Law and Prac-

tice of the American Bar Association. I appear today on behalf of the president of the American Bar who was unable to attend.

We are here to support the legislation. I am accompanied by Professor John Murphy, who is the chairman of our Subcommittee on United Nations Activity, and a recognized expert on the law of terrorism. Mr. Chairman, since 1976, the American Bar Association has supported the treaty and its implementing legislation.

You have heard all the reasons why it is a good idea. We think that the debate has gone on long enough. I think the current Chief Justice who was then an Assistant Attorney General said it best in 1970 when he said in testifying in support of the treaty, "there are no constitutional obstacles to U.S. ratification."

The ABA supports this legislation. We would be happy to help with any technical questions that might arise in draftsmanship or so forth. Professor Murphy would like to address a few of the more technical issues that are in the legislation and have been raised in questions today.

Senator METZENBAUM. Professor Murphy, you might be willing to respond to questions such as those that Senator Grassley was about to pose. Please proceed, Professor Murphy.

Mr. MURPHY. Thank you very much, Mr. Chairman. I would like to start off by responding to some of the questions that both Mr. Grassley and Senator Thurmond have raised. Before I do this, I want to note that 3 years ago I testified before this committee in favor of the Senate agreeing to advise and consent to ratification. Of course, 2 years ago the Senate passed the resolution that gave advice and consent to ratification.

But the problem, as others have pointed out, is that without the implementing legislation, there will be no ratification. So I am very pleased that this hearing is being held. I would like to respond quickly to some of the concerns raised by Mr. Grassley, and then I will address a remark or two to the legislation itself.

First, I agree with Senator Grassley that it is unfortunate that the convention does not cover political genocide. This is a very unfortunate omission. But we have to be careful that the best does not become the enemy of the good. This convention would be better if it covered political genocide, but it does cover racial genocide and other forms of genocide, and it is very important in that respect.

Your second set of questions go to enforcement of the convention through extradition. With respect to the possible implementation of this convention by an international criminal tribunal, one has to realize that there is no such international criminal tribunal. It is highly unlikely frankly at this point that one is going to be established.

If it were to be established, then the United States would have to consider as a separate matter whether it wished to become a member of it and agree to its jurisdiction. But that is not a prospect one can foresee in the near future. Absent that, the convention will be enforced domestically.

That is, it will be enforced in domestic courts, and this, of course, is the purpose of the implementing legislation. I also want to address, however, your concern about extradition. It is important to note that the Genocide Convention is not an extradition convention. Any extradition that the United States might engage in,

either our extraditing people to other countries or our seeking their extradition, would take place not under the Genocide Convention but in accordance with extradition treaties.

In fact, the Supreme Court has made clear that the United States cannot extradite unless there is present an extradition treaty between the United States and the other country. These extradition treaties contain a variety of safeguards that would ensure we would not be required to extradite an individual, a U.S. national or anybody else, to a country where that individual would not receive a fair trial, where he was being sought simply for political reasons or for purposes of persecution.

I would, Mr. Chairman, now like to very briefly consider a couple of points on the implementing legislation. I would address the attention of the committee to pages five and six of Mr. Griffin's and my statement. There are several suggested changes that are set forth on those pages.

I would like to address just two, the two that I regard as most important. The first, on page five, is the idea of putting "specific" before the word "intent." You were expressing a concern about this if I remember correctly, Senator Grassley. And we believe that this concern should be met by inserting the word "specific" before "intent" in the implementing legislation.

Senator METZENBAUM. I do not think we have any problem with that.

Mr. MURPHY. All right. The second concern, starting at the bottom of page five and going over to page six, is a concern that I in particular have. As presently drafted the legislation is exceedingly narrow in the scope of its coverage. It covers only genocide that occurs in the United States or genocide that occurs abroad committed by a U.S. national.

The problem with this is that it is highly unlikely that genocide is going to be committed in the United States. It is also highly unlikely that Americans are going to be committing genocide abroad. The more likely prospect is that persons other than U.S. nationals are going to be committing genocide abroad. And one can envisage a situation where such an individual might come to the United States and be apprehended.

Under the legislation, as currently drafted, the United States would have no jurisdiction to prosecute such an individual for the crime of genocide. And it would, of course, be very uncertain as to whether anybody would seek extradition of such an individual in order to prosecute him.

As a consequence, we would favor the language that is set forth on the top of page six and that appeared in a bill that was drafted in 1976 and accompanied a report of the Senate Foreign Relations Committee at that time. It would seem unfortunate for U.S. jurisdiction to be so narrow in scope as to be dysfunctional with respect to prosecuting and punishing this crime.

Finally, Mr. Chairman, I would hope that once the United States ratifies this convention, the United States Government will actively pursue those individuals and, indeed, those countries that engage in genocide.

There are a variety of means for doing this that the Genocide Convention provides, including a possible action before the Interna-

tional Court of Justice and action before the Security Council and the General Assembly. Once the United States is a party to the convention, it will enhance the prospects of the United States being able to bring a complaint in the political organs of the United Nations against another country that has engaged in genocidal acts.

Since the United States is not a party at this point, it is somewhat hindered in its ability to appear before the political organs of the U.N. to this end. It is necessary, in my view, to actively enforce this convention and make it more meaningful. Thank you.

Senator METZENBAUM. Thank you very much, Professor Murphy and the entire American Bar Association, I might say, and we are very pleased that you are both here. We know of the fact that the ABA has over a period of time been supportive of ratification of the treaty. We may come back to you and pick your brains a bit with respect to some of the legal questions that are raised, and we will certainly consider each of the suggestions that you have made in your presentation.

Senator Grassley.

Senator GRASSLEY. Yes. I thank you for addressing some of the concerns I had and even though on the first point you made about political crimes, even though we cannot solve that problem here, and I only raise it as one of the major concerns I had about it and consequently my vote against it. I do not know whether it is so much that the issue is that the treaty does not include political crimes, but that what comes under the umbrella of political crimes in other countries that would escape punishment under the treaty. You know something that would be holocaust in another language for other reasons, but exemption claimed under the political crime aspect of it, I think that that is as serious as the fact that the treaty itself does not address that issue.

Mr. MURPHY. Just one quick point on that, if I might. As you point out political genocide is not covered by the terms of the treaty. I think a very respectable argument can be made, however, that political genocide is nonetheless a violation of international law, not of this particular treaty, but of norms of customary international law that have developed through the years.

Therefore a claim that political genocide violates international law can be made, although it cannot be made under the treaty itself.

Senator GRASSLEY. Thank you, Mr. Chairman.

Senator METZENBAUM. Thank you very much. And gentlemen, we appreciate your being with us.

Mr. GRIFFIN. Thank you, Mr. Chairman.

Mr. MURPHY. Thank you, Mr. Chairman.

[The statement of Mr. Griffin and Mr. Murphy follows:]

AMERICAN BAR ASSOCIATION
GOVERNMENTAL AFFAIRS OFFICE • 1800 M STREET, N.W. • WASHINGTON, D.C. 20036 • (202) 331-2200

STATEMENT OF

JOSEPH P. GRIFFIN, CHAIRMAN
SECTION OF INTERNATIONAL LAW AND PRACTICE

and

PROFESSOR JOHN F. MURPHY, CHAIRMAN
COMMITTEE ON UNITED NATIONS ACTIVITIES
SECTION OF INTERNATIONAL LAW AND PRACTICE

AMERICAN BAR ASSOCIATION

Before the

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

In Support of

S. 1851
THE PROPOSED
"GENOCIDE CONVENTION IMPLEMENTATION ACT OF 1987"

February 19, 1988

Mr. Chairman, and members of the Committee:

I am Joseph P. Griffin and I am honored to serve this year as Chairman of the Section of International Law and Practice of the American Bar Association. I am in the private practice of law in Washington and am pleased to appear before you today on behalf of the President of the American Bar Association to express the ABA's full support for immediate enactment of S. 1851, the last step before President Reagan's ratification of the International Convention on the Prevention and Punishment on the Crime of Genocide.

Accompanying me today is Professor John Murphy of Villanova University Law School, who is Chairman of the Committee on United Nations Activities of the International Law Section of the ABA. Professor Murphy teaches international law and has developed a well-regarded expertise on the law relating to

international terrorism. He testified before this Committee's Constitution Subcommittee three years ago on this treaty.

It is a particular honor for me, as section chairman, because it was the effort of our section in February 1976, which reversed the then-opposition of the ABA to this treaty.

Two years ago today, at the conclusion of two days of debate, the Senate gave its advice and consent to ratification of the Genocide Convention by a vote of 83 to 11. With that act the Congress[1] essentially rang down the curtain on what was then 38 years of fiercely contested debate on the propriety and utility of the Genocide Convention. In the final analysis the arguments against ratification were even more meager than the 11 votes might suggest. However, this is not to suggest that questions which had been raised -- and some of the more significant ones initially were indeed raised by the American Bar Association -- were without merit. It is only to acknowledge that those questions have been clearly settled.

---

1. Only the Senate has the responsibility to advise and consent to ratification of treaties. However, the voice of the House of Representatives, which now must also pass the implementing legislation, already has been heard. On May 21, 1985 the House approved by voice vote under suspension of the rules H. Res. 166, which resolved, in pertinent part, "that the United States should signify its continuing commitment to ending genocide by promptly joining the ninety-six other nations which have become parties ..." to the treaty; the resolution concluded by declaring that the House of Representatives "will act expeditiously on the required implementing legislation as soon as the Senate gives its advice and consent to ratification of the Genocide Convention."

However, when the final vote was taken two years ago, those concerns -- about the propriety of international human rights treaties, asbout perceived threats to the sovereignty of the United States and to the constitutional protections afforded under the U.S. system of law -- had been answered. The Senate spoke, with conviction and overwhelming support for the proposition that Senator Proxmire had kept before our public conscience for a decade -- that as a free nation governed by the rule of law:

> "We cannot do moral battle against genocide with one hand tied behind our backs. Why permit communist nations, which all too often only give lip service to these obligations, to take the high moral ground in these debates? They have no right to it and we are foolish to abandon it to them.[2]

The importance of the vote on February 19, 1986 cannot be understated. As President Reagan noted in his September 6, 1984 speech to B'nai B'rith, announcing his support for ratification, "...we intend to use the Convention in our efforts to expand human freedom and fight human rights abuses around the world."[3] The decisive Senate vote two years ago, while indeed an important symbolic gesture, was more.

---

2. Genocide: Ratification of the Convention on the Prevention and Punishment of the Crime of Genocide, page 17, Conflict Analysis Center, Washington, D.C. (1984).

3. Weekly Compilation of Presidential Documents, September 16, 1984, Vol. 20-Number 36, pp. 1235-36.

It was a signal to the world that the United States was maintaining its focus on the tools of the law in endeavoring to uphold world order. As familiar as are the historic examples of genocide against the Armenians and the Jews, genocide is a contemporary crime of shocking magnitude, and we must prepare ourselves to fight it -- whether in Iran, where the Bahai minority appear to be the object of genocide, to the terrors of Idi Amin's Uganda, to the sweeping actions against the Miskito Indians in Nicaragua and including the most horrible acts against various groups in Cambodia.

The vote by the Senate was an important symbol, but it was, even more, a commitment to the rule of law. It is in this vein that we are here today. The provisions of the Genocide Convention are not self-executing -- as the final, technical step in this process Congress must pass the legislation pending before this committee, S. 1851, to implement the Convention's provisions. Article IV of the Convention is clear on this point, which is consistent with ithe long-standing U.S. principle that a treaty cannot legislate criminal law. After 40 years of debate all of the substantive issues surrounding this treaty have been settled -- as then Assistant Attorney General William Rehnquist testified in 1970, "There are no Constitutional obstacles to U.S. ratification."

What is left to do is, somewhat surprisingly, quite simple: The international crime of genocide must be made part of the

criminal law of the United States. In a word, we must formally recognize that which even the few opponents of the treaty must surely concede -- that in the United States, as in the world, genocide is a crime.

Mr. Chairman, in the ABA's continuing support for prompt ratification of this treaty, we have also continued to review this implementing legislation. It is, in general terms, very similar to legislation -- S. 3155 -- which Senators Scott and Javits introduced in the 94th Congress, in 1976. However, S. 1851 and its identical House counterpart, H.R. 807, reflect some necessary changes based on the Senate's resolution of ratification, and have been both recorded and streamlined. In this context we would offer a few suggestions.

First, the Senate was clear, in the first understanding, that "specific" intent to commit genocide was required to be proven. While understood in our criminal law, that point should be explicitly reflected by the addition of "the specific" before the word "intent" on the second line of section 1091(a).

Second, overall conformity with the language of the treaty is to be preferred. Thus, for instance, the absence of the language in Article I of the treaty, "... whether committed in time of peace or in time of war..." in the text of S. 1851, is

noteworthy. We find instructive the comparable statement of the crime in the 1976 bill, and would suggest reference to it:

> "(a) Whoever, being a national of the United States or otherwise under or within the jurisdiction of the United States, willfully without justifiable cause, commits, within or without the territory of the United States in time of peace or in time of war, any of the following acts with the intent to destroy by means of the commission of that act, or with the intent to carry out a plan to destroy, the whole or a substantial part of a national, ethnic, racial, or religious group shall be guilty of genocide:

Third, the above language also more clearly states the interest of the United States in asserting jurisdiction over those, for instance, from another country who may be found in the U.S., than does the language in section 1091(d). We would suggest the striking of section 1091(d) since the above-stated substitute for subsection (a) covers this point.

Fourth, section 1091(a)(4), again for purposes of clarity and conformity with the treaty, should have the phrase "in whole or in part" inserted after the last word, "group."

Finally, one of probably a number of other minor corrections is the need to change the word "as" preceeding the word "distinctive" in section 1092(2), to be "is."

Mr. Chairman, any other technical drafting which may be

undertaken should not be permitted to stall prompt enactment of this bill. Legislation has been pending in both houses, it has been reviewed by the Administration and deserves your support.

This is good legislation which should have been the law of our land 40 years ago. We pledge our support to make it the law now. As the celebration of our constitutional bicentennial lingers, and as we enter the 40th anniversary year of the approval of this treaty, now, finally, has the time arrived for this nation to fulfill the dreams of that brilliant lawyer who defined for us the crime that is genocide, Raphael Lemkin, by making genocide a crime in the United States.

3064Q

Senator METZENBAUM. Our last witness today is Trisha Katson, legislative director of Liberty Lobby of Washington.

STATEMENT OF TRISHA KATSON, LEGISLATIVE DIRECTOR, LIBERTY LOBBY, WASHINGTON, DC, ACCOMPANIED BY GARDINER ROGERS, CHAIRMAN OF THE BOARD OF POLICY, LIBERTY LOBBY, WASHINGTON, DC

Ms. KATSON. Thank you, Senator Metzenbaum, and with me today is Gardiner Rogers, our Board of Policy chairman.

Senator METZENBAUM. Your name is Gordon?

Mr. ROGERS. First name Gardiner.

Senator METZENBAUM. Gardiner.

Mr. ROGERS. Last name Rogers, R-O-G-E-R-S.

Senator METZENBAUM. Thank you very much. Please proceed.

Ms. KATSON. I am going to summarize my remarks, and I hope that my written statement will be submitted into the record.

Senator METZENBAUM. Your entire statement will be included in the record.

Ms. KATSON. Thank you. And while I am very happy to present my testimony to both you and Senator Grassley, I am disappointed that the other members of the committee are not here although there are a lot of other people here today.

We represent our 25,000 Board of Policy members, and we also have about 300,000 readers of our weekly newspaper, the Spotlight. We work to preserve, protect and defend the U.S. Constitution, and in line with this we have led the opposition to the Genocide Convention for many years. We oppose S. 1851. There is a very Orwellian nature to the Genocide Convention. I say that because in about 40 years it has not stopped the murder of one person which is what most people believe this misnamed convention would do.

Instead, it has been used in other so-called democracies to attack a principle which is the very foundation of our liberty, and that is freedom of speech. Domestic legislation based on the Genocide Convention in Canada, Britain, West Germany, Sweden, Austria and other nations has resulted in censorship. And these laws are being used to jail and fine people for their political views.

The main target of these government censors up to this point appear to be individuals whose writings and speech are about genocide, specifically the Holocaust of World War II. Some people believe that certain subjects are taboo and should not be freely discussed.

We disagree. Free discussion, debate and expression of every issue no matter how controversial are the very basis in essence of any genuinely democratic society and responsible government. And passage of any laws or regulations like those in these other so-called democracies here in the United States would be a clear violation of our first amendment, constitutional rights of free speech.

In these nations, and even in the United States, certain writings, acts and speeches, are called hate propaganda and the incitements of genocide. I do not know how or if Senator Biden's legislation will be amended, but taking it just as it is, Section C presents a real problem. Anyone who incites or attempts to incite anyone to

commit genocide which is defined in six different ways by the bill, if convicted, could go to jail for 5 years or be fined $500,000.

One can argue that certain writings or speeches or movies or TV programs have incited someone to commit an act of violence or to mentally or physically torture someone. It is a real possibility we feel that such steps will be taken with this bill, and in so doing, silence certain political views. Our own government has cooperated with special interest groups like the Anti-Defamation League to study what they call the "hate movement" in America.

The ADL released a report and listed numerous patriotic individuals and groups like our own who have committed the political sin of calling for a more even-handed U.S. foreign policy in the Middle East as part of this "hate movement" along side radical far out fringe groups that have been charged with acts of violence.

And it is only one step farther than this to charge that something that somebody did or said or wrote in the way of "hate propaganda" led to an act of genocide as defined under this bill. We believe this censorship could happen in America despite our first amendment because what is regarded as constitutionally protected free speech can change as time goes on. The Supreme Court has changed the meaning of the Constitution as it has made decisions based on public policy which is always evolving rather than adhering to the intent of the framers of the Constitution.

Aside from just Section C, we oppose the entire bill because it will now set in motion the machinery for Americans to be tried some day in some international court without their constitutional right to due process. Passing this legislation would be a great bonanza to lawyers at the expense of the American people.

But our Founding Fathers never intended treaties to dictate domestic legislation. Those who once claimed that the Genocide Convention is only a symbolic gesture and will never be enforceable, I notice apparently these people are changing that argument now that the Senate has given its advice and consent to the convention, they must not be aware of the acts of censorship already going on in these countries in the name of fighting hate or genocide, or else favor it.

I cannot believe the promoters of the convention would waste so much time and effort on this and make such a mockery of the legislative process and law. The Genocide Convention would aid those who would like to equalize the economic and political powers of the world into some sort of Marxist utopia by redistributing wealth and power, but it would only jeopardize our constitutional freedoms.

It has been suggested that this implementing legislation be used to prosecute elderly European emigres charged with Nazi war crimes because they would get a fairer trial here than in foreign courts. But we would oppose this because this would violate our anglo-American system of justice by sanctioning ex post facto laws.

We urge this committee to reject this implementing legislation and to uphold your oathes of office to defend the Constitution. I would be happy to provide the committee with any documentation of these other laws that I have mentioned and anything else I have already said here.

Thank you for the opportunity to testify, and we would be happy to answer any questions you have.

Senator METZENBAUM. Thank you very much, Ms. Katson. Do you have any questions, Senator Grassley?

Senator GRASSLEY. I have none.

Senator METZENBAUM. Thank you both for being with us. We are very pleased to have the views of the Liberty Lobby.

[The prepared statements of Ms. Katson follow:]

TESTIMONY OF LIBERTY LOBBY

BEFORE THE SENATE JUDICIARY COMMITTEE

ON IMPLEMENTING LEGISLATION TO

THE GENOCIDE CONVENTION

S. 1851

BY

TRISHA KATSON, LEGISLATIVE DIRECTOR

AND

GARDINER ROGERS, CHAIRMAN OF THE BOARD OF POLICY

ON

FEBRUARY 19, 1988

GENOCIDE CONVENTION TESTIMONY

Thank you for the opportunity to testify here today. I am Trisha Katson, legislative director for LIBERTY LOBBY. With me today is our board of policy chairman, Gardiner Rogers. We are representing our 25,000 board ofpolicy members. Our political perspective is defending the U.S. Constitution and America first. We also have about 100,000 subscribers to our weekly newspaper, The SPOTLIGHT.

We have led the opposition to the Genocide Convention (GC) for many years dating back about to our founding in 1955. Although the convention was ratified, we know it is unenforceable until implementing legislation is passed.

We are concerned that this domestic legislation may be modeled after laws in Canada, Britain, West Germany, Sweden, Austria and other nations which forbid under their criminal codes certain writings, speech, and actions which those governments have decided cause "public harm" or "racial intolerance."

Even if the particular legislation under consideration now before Congress would not suppress freedom of speech, it certainly is a stepping stone toward such future measures being taken. Section (c) of S.1851 is vague enough now to make this a danger. In Canada, which has a fairly new Constitution which is supposed to protect freedom of speech, regulations exist which amount to censorship. It is now it a criminal offense to expose even subversive groups or to allege that any identifiable group is "manipulating media, trade and finance, government or world politics to the detriment of society" or to "blame an identifiable group for serious economic or social problems."

Forbidden from entry into Canada are goods regarded to be hate propaganda under the Criminal Code including those which advocate or promote genocide or hatred against an identifiable group distinguished by color, race, religion, or ethnic origin. Also forbidden are goods which not only promotes the destruction of any identifiable group by advocating either killing members of the group or deliberately inflicting on the group conditions of life calculated to bring about its physical destruction, but goods that promote hatred of any identifiable group by encouraging a reader, viewer or listener to hate, actively dislike, detest, adhor or have feelings of enmity toward that group.

Free discussion, debate and expression is the very basis and essence of any genuinely democratic society and responsible government. Passage of any laws or regulations like those in Canada would be a violation of our Constitutional guarantee of free speech.

These laws in other nations are cited as examples of national enabling legislation against "genocide" which is increasingly invoked to suppress the spoken or written criticism of the behavior or beliefs of minorities in that country.

Our Founding Fathers nevered wanted treaties to dictate domestic legislation and while providing for agreements between nations in the form of treaties, never dreamed of the concept of conventions--agreements between most or all nations of the world, a 20th century phenomenon.

Could such censorship occur here with the First Amendment to the Constitution still intact? Yes. First, there is a danger that a constitutional convention might be convened at which the Constitution might be changed or written. Numerous groups and individuals favor a parliamentary government for the U.S. and admire the governmental structure of these so-called "democracies."

Beyond that possibility, dealing with present-day political realities, the Constitution's meaning has been changed, using one example, by Supreme Court decisions based on public policy, an evolving standard, rather than adhering to the original intent of the Constitution's framers. Certainly this could happen in the area of what is regarded as constitutionally protected free speech.

An attorney for individuals prosecuted under these Canadian laws, one of which, passed in 1968, has its origin and basis with the Genocide Convention, believes that it is the plan of those who regard it as necessary to legislate against opinions they don't like is to take those European countries where the ideas of freedom are less defined than those in the U.S. and gradually eliminate real freedom and substitute the state's imprimatur. And that has already happened in Canada and in other so-called democracies.

As James Martin noted in his book "The Man Who Invented Genocide: The Public Career and Consequences of Raphael Lemkin, "the absence of political and economic group categories from the protected weakens its defensive shield. Any signatory to the Genocide Convention by default has passed up any reason to object to such a process taking place. Therefore, the enforcement of the convention comes down to a local affair, in one state or another."

Enabling legislation takes a step toward this objective and the will to go ahead with such legal action as needed exists in our view.

Article VI of the Genocide Convention says that persons charged with genocide or any other acts listed in Article III shall be tried by courts within the territory of which the act is committed. It has been suggested that the elderly European emigres charged with Nazi-war crimes could be tried in the U.S. under GC enabling legislation. While some may regard this as a noble cause, this would constitute a violation of our Anglo-American system of law by sanctioning ex post facto laws.

Great Britain's Race Relations Acts are cited as examples of national enabling legislation respecting "genocide" which are increasingly invoked to suppress spoken or written criticism of the behavior or beliefs of minorities in that nation. From a constitutional perspective, no laws should be passed that are class-oriented. It appears that a new class of crime is being created. There are already laws on the books outlawing murdering and torturing people. The idea behind this legislation appears to be designed to silence political views and to suppress free expression of ideas. And the word "torture" referred to in the GC could mean mental as well as physical torture.

The questions we ask are: Will a person charged with a

crime under the Genocide Convention be tried in a U.S. district court under the existing rules of criminal procedure? Will such an individual be tried by a jury of their peers?

This committee's report of July 1985 admits that the implementing legislation may not conform to the Constitution, but that supposedly is resolved by a reservation. However, such a reservation may not have legal standing in court should another nation contest it.

Since this bill (S. 1851) would cover those who incite others who violate this law, it would put a chill on those whose writings or speech might be interpreted as causing others to act in a destructive manner.

Since the possibility exists that every minority in our nation could cry out about acts of "genocide"--the American Indians is the best example of a group that has a legitimate complaint to make against past atrocities they suffered--implementing the GC will be a tremendous bonanza to lawyers.

Long-time supporters of Israel--many of whom are sitting on this committee--should be concerned that officials of that Zionist state could be charged with genocide against the Palestinians.

The U.S. Justice Department has worked with special interest groups such as the Anti-Defamation League of B'Nai B'Rith to identify alleged "hate groups" in America. In the process, patriotic individuals and groups who merely advocate a more even-handed U.S. Middle East foreign policy have been lumped in with radical extremists charged with committing violent acts. In light of this it is not unreasonable to assume that steps may some day be taken to claim that speech or writings by those unjustly identified as being involved in the "hate movement"--such as this populist institution, LIBERTY LOBBY, and the literature we publish--could incite others to conspire to commit genocide as defined in numerous ways by the GC. This would not only be a ridiculous charge but would constitute censorship of political ideas.

This implementing legislation will set in motion the machinery to thus allow Americans to be tried by a foreign court with no guarantee of the protections of our Constitution.

The Genocide Convention could aid those who may want to equalize the economic and political powers of the world into some sort of Marxist utopia through redistribution of wealth and power, but it will do nothing to aid in the promotion of the laws of our land and our constitutional republic and indeed will put it into jeopardy.

We urge this committee to reject this implementing legislation.

Thank you for the opportunity to testify here today. We would be happy to answer any questions.

TESTIMONY ON S.1851
IMPLEMENTING LEGISLATION
TO THE
GENOCIDE CONVENTION
BEFORE THE SENATE JUDICIARY COMMITTEE
FEBRUARY 19, 1988
PRESENTED ON BEHALF OF
LIBERTY LOBBY
BY
LEGISLATIVE DIRECTOR TRISHA KATSON
AND
BOARD OF POLICY CHAIRMAN GARDINER ROGERS

Thank you for the opportunity to testify here today. I am Trisha Katson, legislative director for LIBERTY LOBBY. With me today is our board of policy chairman, Gardiner Rogers. We are representing our 25,000 board of policy members. Our political perspective is defending the U.S. Constitution and America first. We also have about 300,000 readers of our weekly newspaper, The SPOTLIGHT.

We have led the opposition to the Genocide Convention (GC) for many years dating back about to our founding in 1955. Although the convention was ratified, we know it is unenforceable untilimplementing legislation is passed.

LIBERTY LOBBY's opposition to the implementing legislation is for numerous reasons including the following:

*Political and economic genocide (murder) were categories excluded by the Soviets during drafting of the GC at the United Nations in 1948 rendering it impotent to prevent or punish killing currently perpetrated by Israel, the Soviet Union and other nations.

*The United States has no business charging other nations

with genocide since it has been guilty of: sanctioning by law the killing of millions of unborn children; committing genocide against the American Indians; funding genocidal communist regimes; building up Israel's powerful war machine against the Palestinians, and aiding in other genocidal activities through its meddling internationalistic foreign policy.

*Implementing legislation will set in motion the machinery to try Americans before a world court without their Constitutional rights of due process.

*This legislation will likely be used to suppress First Amendment guarantees of free speech by persecuting those with opinions contrary to enforcers of the law.

*Passage of the bill means a bonanza for lawyers and increased litigation will tie up the court system at the expense of the American people.

*American leaders, including members of Congress, under the GC's Article IV, could be charged with genocide for their role in funding genocide around the world.

*Section (c) of the bill would fine and jail those who "incite" others to commit "genocide" as defined in six different ways under the bill. This will chill free speech.

We are concerned that this domestic legislation may be modeled after laws in Canada, Britain, West Germany, Sweden, Austria and other nations which forbid under their criminal codes certain writings, speech, and actions which those governments have decided cause "public harm" or "racial intolerance."

One of the most outspoken advocates of the GC, Elie Wiesel, who has testified before the Senate Foreign Relations Committee and has provided a statement for the record at this hearing which was presented by Hyman Bookbinder, wants a law passed to crack down on "group defamation." Wiesel is listed as keynote speaker at a conference on April 20-22, 1988 sponsored by Hofstra University in Hempstead, New York on "Group Defamation and Freedom of Speech: The Relationship Between Language and Violence." In conjunction with this is a statutory drafting competition in which law students are invited to draft a model statute outlawing group defamation in a state in the U.S.

The conference will address issues dealing with group defamation from legal, philosophical, psychological and historical perspectives. Topics include:

#the Genocide Convention;

#group defamation under the First Amendment;

#experience with legislation in other countries including Canada, Denmark, France, Great Britain, Israel, Italy and West Germany;

#group defamation as a causal factor in particular episodes of violence or oppression;

#problems of drafting and enforcement; and

#pornography and group defamation.

The individual with the winning submission gets a $1500 prize and his submission will be used as the basis for a moot court argument that will take place as part of the conference. The moot appeal will be argued before a bench of jurists by

Harvard Law professor Alan Dershowitz and Columbia Law professor Jack Greenberg. It will be videotaped and made available to law schools throughout the nation.

In Canada, which has a six-year-old Charter of Rights and Freedoms, government guidelines exist which make it a criminal offense to expose even subversive groups or to allege that any identifiable group is "manipulating media, trade and finance, government or world politics to the detriment of society," or to "blame an identifiable group for serious economic or social problems."

Classified under Code 9956 of Schedule VII to the Customs Tariff as hate propaganda and banned from entry into Canada are goods that promote hatred of any identifiable group by encouraging a reader, viewer or listener to hate, actively dislike, detest, abhor or have feelings of enmity toward the group.

An attorney for individuals prosecuted under these Canadian laws, one of which, passed in 1966, has its origin and basis with the Genocide Convention, believes that it is the plan of those who regard it as necessary to legislate against opinions they don't like to take those European countries where the ideas of freedom are less defined than those in the U.S. and gradually eliminate real freedom and substitute the state's imprimatur. And that has already happened in Canada and in other so-called democracies.

Great Britain's Race Relations Acts are cited as examples of national enabling legislation respecting "genocide" which are increasingly invoked to suppress spoken or written

criticism of the behavior or beliefs of minorities in that nation.

These laws in other nations are cited as examples of national enabling legislation against "genocide" which is increasingly invoked to suppress the spoken or written criticism of the behavior or beliefs of minorities in that country.

Could such censorship occur here with the First Amendment to the Constitution still intact? Yes. First, there is a danger that a constitutional convention might be convened at which the Constitution might be changed or written. Numerous groups and individuals favor a parliamentary government for the U.S. and admire the governmental structure of these so-called "democracies."

Beyond that possibility, dealing with present-day political realities, the Constitution's meaning has been changed, using one example, by Supreme Court decisions based on public policy, an evolving standard, rather than adhering to the original intent of the Constitution's framers. Certainly this could happen in the area of what is regarded as constitutionally protected free speech.

Since this bill (S. 1851) would cover those who incite others who violate this law, it would put a chill on those whose writings or speech might be interpreted as causing others to act in a destructive manner.

Even if the particular legislation under consideration now before Congress would not suppress freedom of speech, it certainly is a stepping stone toward such future measures being taken.

The U.S. Justice Department has worked with special interest groups such as the Anti-Defamation League of B'Nai B'Rith to identify alleged "hate groups" in America. In the process, patriotic individuals and groups who merely advocate a more even-handed U.S. Middle East foreign policy have been lumped in with radical extremists charged with committing violent acts. In light of this it is not unreasonable to assume that steps may some day be taken to claim that speech or writings by those unjustly identified as being involved in the "hate movement"--such as this populist institution, LIBERTY LOBBY, and the literature we publish--could incite others to conspire to commit genocide as defined in numerous ways by the GC. This would not only be a ridiculous charge but would constitute censorship of political ideas.

Free discussion, debate and expression is the very basis and essence of any genuinely democratic society and responsible government. Passage of any laws or regulations like those in Canada would be a violation of our Constitutional guarantee of free speech.

Enabling legislation takes a step toward this objective of silencing free speech and the will to go ahead with such legal action as needed exists in our view.

Article VI of the Genocide Convention says that persons charged with genocide or any other acts listed in Article III shall be tried by courts within the territory of which the act is committed. It has been suggested that the elderly European

emigres charged with Nazi-war crimes could be tried in the U.S. under GC enabling legislation. While some may regard this as a noble cause, this would constitute a violation of our Anglo-American system of law by sanctioning ex post facto laws.

From a constitutional perspective, no laws should be passed that are class-oriented. It appears that a new class of crime is being created. There are already laws on the books outlawing murdering and torturing people. The idea behind this legislation appears to be designed to silence political views and to suppress free expression of ideas. And the word "torture" referred to in the GC could mean mental as well as physical torture.

The questions we ask are: Will a person charged with a crime under the Genocide Convention be tried in a U.S. district court under the existing rules of criminal procedure? Will such an individual be tried by a jury of his peers?

This committee's report of July 1985 admits that the implementing legislation may not conform to the Constitution, but that supposedly is resolved by a reservation. However, such a reservation may not have legal standing in court should another nation contest it.

Our Founding Fathers nevered wanted treaties to dictate domestic legislation and while providing for agreements between nations in the form of treaties, never dreamed of the concept of conventions--agreements between most or all nations of the world, a 20th century phenomenon.

This implementing legislation will set in motion the machinery to thus allow Americans to be tried by a foreign court

with no guarantee of the protections of our Constitution.

As James Martin noted in his book "The Man Who Invented Genocide: The Public Career and Consequences of Raphael Lemkin, "The absence of political and economic group categories from the protected weakens its defensive shield. Any signatory to the Genocide Convention by default has passed up any reason to object to such a process taking place. Therefore, the enforcement of the convention comes down to a local affair, in one state or another."

Since the possibility exists that every minority in our nation could cry out about acts of "genocide"--the American Indians are the best example of a group that has a legitimate complaint to make against past atrocities they suffered--implementing the GC will be a tremendous bonanza to lawyers.

Long-time supporters of Israel--many of whom are sitting on this committee--should be concerned that officials of that Zionist state could be charged with genocide against the Palestinians.

The Genocide Convention could aid those who may want to equalize the economic and political powers of the world into some sort of Marxist utopia through redistribution of wealth and power, but it will do nothing to aid in the promotion of the laws of our land and our constitutional republic and indeed will put them into jeopardy.

We urge this committee to reject this implementing legislation.

Senator METZENBAUM. Before the hearing is concluded, the statements of Senator Humphrey, Senator Hatch; and Senator Kennedy, and the Amnesty International USA will be included in the record.

[The statements of Senator Humphrey, Senator Hatch, Senator Kennedy, and the Amnesty International USA follow:]

STATEMENT OF SENATOR GORDON J. HUMPHREY
GENOCIDE CONVENTION IMPLEMENTING LEGISLATION

SENATE JUDICIARY COMMITTEE
FEBRUARY 19, 1988

ALTHOUGH I HAD RESERVATIONS ABOUT THE EFFICACY AND CERTAIN OTHER ASPECTS OF THE GENOCIDE CONVENTION, I VOTED FOR ITS RATIFICATION IN 1986. ONE OF MY PRIMARY RESERVATIONS LIES IN THE FACT THAT THE CONVENTION IS NOT LIKELY TO HAVE ANY EFFECT ON THOSE WHO HAVE ACTUALLY ENGAGED IN GENOCIDAL ACTS, SUCH AS THE SOVIETS IN AFGHANISTAN AND THE KHMER ROUGE IN CAMBODIA. ON THE OTHER HAND, IDEOLOGICAL OPPONENTS OF THE UNITED STATES HAVE BEEN KNOWN TO CHARGE THIS COUNTRY WITH GENOCIDE WHEN IT HAS ACTUALLY SOUGHT TO OPPOSE THE VERY TOTALITARIAN FORCES WHICH PRESENT THE ONLY GENUINE THREAT OF GENOCIDE.

NONETHELESS, THE INCLUSION OF THE EIGHT LUGAR/HELMS PROVISOS TO THE THE CONVENTION PERSUADED ME TO VOTE FOR ITS APPROVAL. IF THOSE PROVISOS ARE SCRUPULOUSLY HONORED, THE CONVENTION CAN BE VIEWED AS A MARGINALLY USEFUL EXPRESSION OF CONDEMNATION FOR A FORM OF ATROCITY THAT ALL CIVILIZED NATIONS SELF-EVIDENTLY CONDEMN.

BUT AS LONG AS THE SOVIET KILLING CONTINUES IN AFGHANISTAN, THERE IS A HOLLOW RING TO OUR RATIFICATION OF THE GENOCIDE CONVENTION. WHAT GOOD DO THE PIOUS PRONOUNCEMENTS OF THIS CONVENTION DO WHEN THE NATIONS OF THE WORLD LACK THE WILL OR EVEN THE INCLINATION TO TAKE EFFECTIVE

MEASURES AGAINST THIS CONTINUING ATROCITY? THE HARD FACT IS THAT HIGH-SOUNDING TREATIES LIKE THE GENOCIDE CONVENTION ARE TOTALLY INEFFECTUAL TO COMBAT THE DETERMINED BRUTALITIES OF THE SOVIET UNION. IN THAT RESPECT, THE CONVENTION CAN BE VIEWED AS A FIGLEAF COVERING THE COLLECTIVE INCAPACITY OF CIVILIZED NATIONS TO TAKE EFFECTIVE PRACTICAL MEASURES AGAINST ACTUAL GENOCIDAL CAMPAIGNS, SUCH AS THOSE IN AFGHANISTAN AND CAMBODIA.

PUTTING ASIDE THAT BROADER ISSUE, IT IS IMPORTANT THAT LEGISLATION IMPLEMENTING THE CONVENTION ADHERE TO THE IMPORTANT PROVISOS ON WHICH THE SENATE'S APPROVAL WAS CONDITIONED. FOR EXAMPLE, THE SENATE'S ADVICE AND CONSENT TO THE CONVENTION WAS CONDITIONED ON THE FOLLOWING EXPLICIT UNDERSTANDING:

"THAT THE TERM `INTENT TO DESTROY, IN WHOLE OR IN PART, A NATIONAL, ETHNICAL, RACIAL, OR RELIGIOUS GROUP AS SUCH' APPEARING IN ARTICLE II MEANS THE **SPECIFIC** INTENT TO DESTROY, IN WHOLE OR SUBSTANTIAL PART, A NATIONAL, ETHNICAL, RACIAL, OR RELIGIOUS GROUP AS SUCH BY THE ACTS SPECIFIED IN ARTICLE II."

THE SENATE INSISTED ON THIS PROVISO NOT IN ORDER TO MAKE IT HARDER TO PROSECUTE GENOCIDE, BUT IN ORDER TO PREVENT THE BROAD LANGUAGE OF THE CONVENTION FROM BEING USED AGAINST ACTS THAT ARE FAR REMOVED FROM ACTUAL GENOCIDE. I NOTE THAT THE

IMPLEMENTING LANGUAGE IN THE CURRENT VERSION OF S.1851 HAS DELETED THE TERM "SPECIFIC" FROM THE INTENT LANGUAGE CAREFULLY FRAMED IN THE ABOVE-QUOTED PROVISO. HOWEVER, I BELIEVE THE IMPLEMENTING LEGISLATION MUST FAITHFULLY CONFORM TO THE LANGUAGE USED IN THE SENATE-APPROVED PROVISOS. THEREFORE, THE BILL SHOULD BE AMENDED TO INCLUDE THE "SPECIFIC" INTENT LANGUAGE AS IT WAS DRAFTED IN THE ORIGINAL SENATE PROVISO.

THERE ARE OTHER QUESTIONS CONCERNING THE APPLICATION OF SPECIFIC PROVISIONS OF THE IMPLEMENTING STATUTE THAT NEED TO BE CONSIDERED. THESE QUESTIONS CONCERN THE POSSIBILITY THAT SOME OF THE CATEGORIES OF ACTS TREATED AS "GENOCIDE" OFFENSES UNDER THE STATUTE COULD BE APPLIED BY COURTS TO ACTIONS THAT HAVE NOTHING TO DO WITH ACTUAL GENOCIDE. FOR EXAMPLE, THE IMPLEMENTING STATUTE PROVIDES THAT CAUSING SERIOUS BODILY INJURY TO A SINGLE PERSON WHO BELONGS TO ONE OF THE PROTECTED CLASSES MAY FORM THE PREDICATE FOR A CHARGE OF GENOCIDE. CAREFUL APPLICATION OF THE BILL'S "SPECIFIC INTENT" LANGUAGE MAY WELL RESOLVE THESE CONCERNS. HOWEVER, I BELIEVE THAT WE SHOULD HAVE THE BENEFIT OF THE JUSTICE DEPARTMENT'S LEGAL VIEWS ON THESE POTENTIAL ISSUES BEFORE WE FINALIZE THE LANGUAGE OF THE IMPLEMENTING LEGISLATION.

STATEMENT OF ORRIN G. HATCH
SENATE COMMITTEE ON THE JUDICIARY
HEARING ON LEGISLATION TO IMPLEMENT THE GENOCIDE CONVENTION
FEBRUARY, 19, 1988

THE GENOCIDE CONVENTION WAS ADOPTED BY THE U.N. GENERAL ASSEMBLY ON DEC. 10, 1948, AND SUBMITTED BY PRESIDENT HARRY TRUMAN TO THE SENATE FOR ITS "ADVICE AND CONSENT" IN 1949. NEARLY 37 YEARS LATER, ON FEB. 19, 1986, THE SENATE APPROVED THE TREATY DECLARING GENOCIDE TO BE A CRIME.

DURING THE YEARS OF DEBATE ON THE NEED FOR AND ADVISABILITY OF ADOPTING THE GENOCIDE CONVENTION, A NUMBER OF CONCERNS WERE RAISED. ONE OF THE MOST SERIOUS CRITICISMS INVOLVED THE INCLUSION OF INCITEMENT TO COMMIT GENOCIDE AS A PUNISHABLE ACT UNDER THE CONVENTION. IN THE IMPLEMENTATION LEGISLATION BEFORE US, THE INCITEMENT OFFENSE IS COVERED IN SUBSECTION (C) WHICH INVOLVES ONE WHO "DIRECTLY AND PUBLICLY" INCITES ANOTHER TO COMMIT GENOCIDE. THE DEFINITION SECTION OF THE BILL CLARIFIES THAT "INCITES" MEANS URGING ANOTHER "TO ENGAGE IMMINENTLY IN CONDUCT IN CIRCUMSTANCES UNDER WHICH THERE IS A SUBSTANTIAL LIKELIHOOD OF IMMINENTLY CAUSING SUCH CONDUCT."

CLEARLY, THE LINE BETWEEN INCITEMENT AND PERSUASION IS DIFFICULT TO DRAW. THE INCITEMENT PROVISION WAS INCLUDED IN THE CONVENTION IN ORDER TO HELP DETER ACTS OF GENOCIDE BUT IT HAS BEEN CRITICIZED AS POTENTIALLY INFRINGING ON THE EXERCISE OF FREE SPEECH. UNDER BRANDENBURG V. OHIO, 395 U.S. 444 (1969), ONLY INCITEMENT WHICH IS DIRECTED TOWARD PRODUCING IMMINENT LAWLESS ACTION AND IS LIKELY TO PRODUCE SUCH ACTION IS PUNISHABLE. THE SERIOUSNESS OF THIS FIRST AMENDMENT CONCERN RESULTED IN THE SENATE ADOPTING A RESERVATION TO THE TREATY STATING THAT NOTHING IN THE TREATY REQUIRES THE UNITED STATES TO TAKE ANY ACTION THAT MIGHT BE PROHIBITED BY THE UNITED STATES CONSTITUTION.

OTHER IMPORTANT RESERVATIONS WERE ADOPTED BY THE SENATE TO ENSURE THAT UNITED STATES INTERESTS ARE NOT COMPROMISED THROUGH ADOPTION OF THE TREATY, INCLUDING A RESERVATION DECLARING THAT THE UNITED STATES HAS THE RIGHT TO REFUSE JURISDICTION BEFORE THE INTERNATIONAL COURT OF JUSTICE WHEN IT DETERMINES THAT GOING BEFORE THE INTERNATIONAL TRIBUNAL WOULD NOT BE IN THE NATIONAL INTEREST.

MR. CHAIRMAN, 37 YEARS IS LONG ENOUGH. GIVEN THE SENATE RESERVATIONS THAT ENSURE THE PROTECTION OF UNITED STATES INTERESTS, WE SHOULD MOVE QUICKLY TO ENACT S. 1851 TO IMPLEMENT THE GENOCIDE CONVENTION. I JOIN IN WELCOMING THE DISTINGUISHED WITNESSES HERE THIS MORNING AND LOOK FORWARD TO HEARING THEIR TESTIMONY ON THE IMPLEMENTING LEGISLATION.

STATEMENT BY SENATOR EDWARD M. KENNEDY
IN SUPPORT OF S. 1851
A BILL TO IMPLEMENT THE INTERNATIONAL CONVENTION ON THE
PREVENTION AND PUNISHMENT OF GENOCIDE

February 19, 1988

This morning the Judiciary Committee takes an important step toward bringing the United States into the family of nations committed to combating one of the worst evils of our time -- genocide. I am pleased to join with my colleagues on the Committee in supporting this important legislation and urge swift and positive action on it.

This year marks the 40th anniversary of the unanimous adoption by the General Assembly of United Nations of the Genocide Convention -- and of the signing of that document by the United States. 97 countries have now ratified that Convention. Governments which are conservative, liberal and Communist have joined together in this strong condemnation of the appalling crime of Genocide. Canada, Mexico, Eastern and Western European countries, China and the Soviet Union, Chile and Paraguay are party to the Convention.

Regrettably and inexcusably, the United States has yet to join these other nations in full support of the Genocide Convention. Every President since Truman has urged ratification of the Convention. Every charge put forward by the opponents of ratification by the United States has been answered, every concern about protection of the Constitutional rights of our citizens has been addressed. The Convention has withstood the excesses of the McCarthy era, weathered the charges of the right wing and waited out the Senate filibusters.

Two years ago today, the Senate approved the Genocide Convention by an overwhelming vote of 83-11. That Senate action took into full consideration the concerns of all members -- on the left and on the right. In its Resolution of Ratification, the Senate incorporated a total of eight provisions to accommodate the various concerns raised by Members -- two reservations, five understandings and one declaration. Surely, we have addressed the legitimate concerns of the American people regarding this Convention. We have delayed, deliberated and debated too long in enacting this implementing legislation.

The bill before us is quite straightforward. It simply defines the penalties applied to anyone found guilty of genocide, attempted genocide or of inciting genocide. This legislation was embodied in the Genocide Convention itself which requires parties to the Convention to punish -- according to their own laws -- individuals who commit genocide. To date, the United States has no such penalty. This legislation makes genocide a crime and sets an appropriate punishment for anyone guilty of that heinous crime.

The United States can delay no longer in becoming a full party to the Genocide Convention. Our failure to implement the Convention has damaged our moral standing among nations and hindered our efforts to pressure other governments to respect human rights and obey the rule of law. We would be better positioned to defend and protect the rights of the Baha'is (BAH-HIGHS) in Iran, the Miskitos in Nicaragua and the people of Cambodia were we to ratify this Convention. Enactment of this legislation is in no way just a symbolic gesture -- in order to protect and advance human rights throughout the earth, we must be a full partner in the efforts of the international bodies to promote the values upon which this nation is founded.

AMNESTY
INTERNATIONAL
USA

608 Massachusetts Avenue, N.E.
Washington, D.C. 20002 (202) 544-0200

STATEMENT OF AMNESTY INTERNATIONAL USA
ON THE
GENOCIDE CONVENTION IMPLEMENTING LEGISLATION (S.1851)

Amnesty International USA commends Senator Howard Metzenbaum for holding hearings on legislation to implement the International Convention on the Prevention and Punishment of Genocide. We hope that these hearings will provide the necessary momentum for passage of this legislation and allow the United States finally to complete the process of ratification of this important human rights treaty.

As an organization fighting for recognition and respect for fundamental human rights, focusing on freeing prisoners of conscience, obtaining fair trials for all political prisoners, and working to eradicate torture and executions, we are aware of the importance of international agreements in the field of human rights to which nation states bind themselves. These treaties establish the understood framework of international standards that govenments can then be held accountable to.

The phenomenon of political killings by governments is unfortunately a reality in the world today. In 1983, Amnesty International published a report exposing the occurrence of this type of human rights violation in a variety of countries of various political persuasions. Genocide is one form, certainly the most massive form, of this egregious violation of the right to life. The Genocide Convention was developed as a reaction to the atrocities under the Nazi regime in Europe; however, the crime of genocide did not end with World War II. This and other related phenomenon continue to challenge the conscience of nations.

The United States has been unreasonbly reluctant to join the more that 97 nations that have now bound themselves to the provisions of this 40-year-old treaty. Following the 83-11 vote in the Senate to endorse ratification by the United States, the Senate unfortunately made that ratification contingent upon passing implementing legislation that would make genocide a crime in the United States. Certainly this type of legislation ought to follow ratification. Making its passage precede the final step of ratification has simply delayed further what was already an embarrassingly long process.

It has been two years since that Senate vote. We hope these hearings will mark the beginning of an accelerated process finally to finish the job of ratification.

Amnesty International is an independent worldwide movement working impartially for the release of all prisoners of conscience, fair and prompt trials for political prisoners and an end to torture and executions. It is funded by donations from its members and supporters throughout the world.

CHAIR, BOARD OF DIRECTORS
Charles P. Henry

EXECUTIVE DIRECTOR
John G. Healey

CO DIRECTORS, WASHINGTON OFFICE
Paul R. Ford Patricia L. Rengel

We commend the action of Senators Biden, Metzenbaum, and Proxmire in introducing this legislation in November 1987. We recommend speedy action under their leadership to pass this legislation and move on to a significant roster of other human rights treaties awaiting Senate action.

February 19,1988

Senator METZENBAUM. With that, we conclude this hearing.
[Whereupon, at 11:25 a.m., the committee was adjourned.]

APPENDIX

NATIONAL SPIRITUAL ASSEMBLY
OF THE
BAHÁ'ÍS OF THE UNITED STATES
1606 NEW HAMPSHIRE AVENUE N.W. · WASHINGTON, D.C. 20009 · (202) 265-8825

OFFICE OF EXTERNAL AFFAIRS

February 19, 1988

The Honorable Joseph R. Biden, Jr.
Chairman, Senate Judiciary Committee
224 Senate Dirksen Office Building
Washington, D.C. 20510

Dear Senator Biden:

As the Senate Judiciary Committee opens hearings on implementation of the genocide convention, we would like to express our support for any legislation that implements the International Convention on the Prevention and Punishment of Genocide.

This has been a century of genocide, and the Baha'i community of Iran is only one group to have suffered this most heinous of crimes against humanity.

It is our hope that S.1851 will be one measure that will assist in the eradication of future instances of genocide.

Sincerely,

Katharine R. Bigelow
Deputy Director

KRB/ats

STATEMENT OF DR. ROUBEN ADALIAN
DIRECTOR, ACADEMIC AFFAIRS OF THE
ARMENIAN ASSEMBLY OF AMERICA
GENOCIDE CONVENTION IMPLEMENTING LEGISLATION (S. 1851)
SENATE JUDICIARY COMMITTEE
FEBRUARY 19, 1988

The Armenian Assembly of America strongly supports the speedy passage of legislation to implement the International Convention on the Prevention and Punishment of Genocide.

We commend Senators Biden, Metzenbaum and Proxmire for introducing this important legislation and urge that the Senate move in a timely manner this year to approve the bill.

The Armenian Genocide was the first example of genocide in the 20th century. Indeed, many believe it to be the worst example of mass slaughter history had known up until that time. Our American Ambassador to Ottoman Turkey, Henry Morgenthau, Sr., stated:

> "I am confident that the whole history of the human race contains no such horrible episode as this. The great massacres and persecutions of the past seem almost insignificant when compared with the sufferings of the Armenian race in 1915."
> (Source: Ambassador Morgenthau's Story, 1919, p. 321-322.)

Indeed, Professor Raphael Lemkin, who first coined the word genocide and worked tirelessly toward the adoption of the Genocide Convention by the United Nations, was particularly sensitive to the extermination of the Armenians in Ottoman Turkey in 1915.

Lemkin first proposed "to declare the destruction of racial, religious, or social collectivities" an international crime at the International Conference on the Unification of Criminal Law held at Madrid in 1933 under the auspices of the League of Nations. Although at first rejected, his proposal gained new significance after the destruction of European Jewry in World War II and led to the drafting of the Genocide Convention by a United Nations committee in 1947-1948. In his decade-long effort to obtain ratification of the treaty, Lemkin repeatedly noted the Armenian atrocities, together with the Holocaust, as prototypes of the crime of genocide.

In Totally Unofficial, an unpublished autobiography of Lemkin, Lemkin stated:

> "...A bold plan was formulated in my mind. This consisted (of) obtaining the ratification by Turkey among the first twenty founding nations. This would be an atonement for (the) genocide of the Armenians. But how could this be achieved?...The Turks are proud of their republican form of government and of

progressive concepts, which helped them in replacing the rule of the Ottoman Empire. The genocide convention must be put within the framework of social and international progress. I knew however that in this conversation both sides will have to avoid speaking about one thing, although it would be constantly in their minds: the Armenians."

(Source: The Raphael Lemkin Papers, p. 32, N.Y. Public Library)

Indeed, Turkey did become one of the twenty original nations to adopt the Genocide Convention. Turkey, like Germany and many other nations whose past regimes have been guilty of genocidal practices, has seen the value of joining in an international agreement against the crime of genocide. It is critical that the United States now do so as well.

Armenian-Americans are convinced that if there had been a Genocide Convention in place in 1915, the mere existence of such an internationally-adopted document outlawing the crime being perpetrated in Ottoman Turkey may have dissuaded the Young Turks from completing their campaign against the Armenian Christian minority.

Two years ago, the Senate took the important step of endorsing ratification of the Convention by the United States. But that action is just window-dressing until this implementing legislation is approved.

We commend Senator Metzenbaum for holding this hearing on the implementing legislation and look forward to the Senate completing its work toward final ratification.

***** The Armenian Assembly of America is a national non-profit organization based in Washington, D.C. Since 1972, the Assembly has presented Armenian-American community viewpoints within the legislative and executive branches of government.

The American Jewish Committee

OFFICE OF THE WASHINGTON REPRESENTATIVE, 2027 Massachusetts Avenue, NW, Washington, D.C. 20036 (202) 265-2000

February 18, 1988

The Honorable Joseph Biden
Chairman
Committee on the Judiciary
489 Russell Senate Office Building
Washington, DC 20510

Dear Senator Biden:

The American Jewish Committee is gratified to learn that the Senate Committee on the Judiciary is holding a hearing on S.1851, the Genocide Implementation Act of 1987.

As you know, February 19, 1986 marks the second anniversary since the United States Senate voted overwhelmingly to ratify the international Genocide Convention. Yet, that action remains incomplete. The United States will not become an actual signatory to the human rights treaty until the Congress adopts enabling legislation, making genocide a crime under American law. Failure to enact such legislation has led to unfortunate delays which have embarrassed the United States in the international community and challenged our credibility as a champion of human rights.

We urge the members of the Judiciary Committee to report out S.1851 favorably and expeditiously, and to seek full Senate action early this year, the 40th anniversary of the unanimous United Nations vote to endorse the Genocide Convention.

Respectfully,

David A. Harris
Washington Representative

B'NAI B'RITH INTERNATIONAL
1640 Rhode Island Ave., N.W.
Washington, D.C. 20036
(202) 857-6534
TWX 710-822-0668/Cable BNAIBRITH WASHDC

Press Office

NEWS

Contact: Hank Siegel

Release: Immediate

B'NAI B'RITH AND ITS ANTI-DEFAMATION LEAGUE CALL
FOR LEGISLATION TO IMPLEMENT GENOCIDE CONVENTION

WASHINGTON, Feb. 19 -- On this, the second anniversary of the Senate's vote for ratificatin of the Genocide Convention, B'nai B'rith and its Anti-Defamation League call on Congress to complete the unfinished business of passing implementing legislation for the treaty.

B'nai B'rith international President Seymour D. Reich said that "by failing to complete the bold step taken by the Senate in 1986, the United States gives the Soviets an additional piece of ammunition to lob at us in bilateral and multilateral discussions of human and civil rights. Moreover, by making genocide a federal crime, the United States can effectively assume a leading global role in exposing future perpetrators of genocide.

"It would be tragic if the United States remained the major holdout among almost 100 countries to ratify this 40-year-old treaty which deals with the crime of 'intent to destroy, in whole or in substantial part, a nation, ethnic, racial or religious group.'

-More-

"We are pleased that the overwhelming majority of Senators, voting 83 to 11, saw fit to ratify the convention two years ago. It is important for the Congress to complete the task by supporting S. 1851 and HR 807, identical bills."

B'nai B'rith hopes that the legislation can be adopted and signed by the President by Yom HaShoah, (Holocaust Remembrance Day) April 14, since this is the first piece of American legislation designed to prevent a repetition of the Holocaust.

021988039

Calendar No. 655

100TH CONGRESS
2D SESSION

S. 1851

[Report No. 100–333]

To implement the International Convention on the Prevention and Punishment of Genocide.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 5, 1987

Mr. BIDEN (for himself, Mr. PROXMIRE, Mr. METZENBAUM, Mr. DODD, Mr. SIMPSON, Mr. KENNEDY, Mr. SIMON, Mr. LEVIN, Mr. LAUTENBERG, Mr. MOYNIHAN, and Ms. MIKULSKI) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

MAY 11 (legislative day, MAY 9), 1988

Reported by Mr. BYRD (for Mr. BIDEN), with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To implement the International Convention on the Prevention and Punishment of Genocide.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

~~SECTION 1. SHORT TITLE.~~

~~This Act may be cited as the "Genocide Convention Implementation Act of 1987".~~

SEC. 2. TITLE 18 AMENDMENTS.

(a) IN GENERAL.—Title 18, United States Code, is amended by inserting after chapter 50 the following:

"CHAPTER 50A—GENOCIDE

"Sec.
1091. Genocide.
1092. Definitions.

"§ 1091. Genocide

"(a) BASIC OFFENSE.—Whoever, in a circumstance described in subsection (d) of this section and with intent to destroy, in whole or in substantial part, a national, ethnic, racial, or religious group—

"(1) kills a member of that group;

"(2) causes serious bodily injury to a member of that group;

"(3) causes the permanent impairment of the mental faculties of a member of the group through drugs, torture, or similar techniques;

"(4) subjects the group to conditions of life that are intended to cause the physical destruction of the group;

"(5) imposes measures intended to prevent births within the group; or

"(6) transfers by force a child of the group to another group;

or attempts to do so, shall be punished as provided in subsection (b) of this section.

"(b) PUNISHMENT FOR BASIC OFFENSE.—The punishment for an offense under subsection (a) of this section is—

"(1) in the case of an offense under subsection (a)(1) that results in the death of any person, a fine of not more than $1,000,000 or imprisonment for life, or both; and

"(2) a fine of not more than $1,000,000 or imprisonment for twenty years, or both, in any other case.

"(c) INCITEMENT OFFENSE.—Whoever in a circumstance described in subsection (d) of this section directly and publicly incites another to violate subsection (a) of this section shall be fined not more than $500,000 or imprisoned not more than five years, or both.

"(d) REQUIRED CIRCUMSTANCE FOR OFFENSES.—The circumstance referred to in subsections (a) and (c) of this section is that—

"(1) the offense is committed within the United States; or

"(2) the alleged offender is a national of the United States (as defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101)).

"§ 1092. Definitions

"As used in this chapter—

"(1) the term 'child' means an individual who has not attained the age of eighteen years;

"(2) the term 'ethnic group' means a set of individuals whose identity as such as distinctive in terms of common cultural traditions or heritage;

"(3) the term 'incites' means urges another to engage imminently in conduct in circumstances under which there is a substantial likelihood of imminently causing such conduct;

"(4) the term 'national group' means a set of individuals whose identity is distinctive in terms of nationality or national origins;

"(5) the term 'racial group' means a set of individuals whose identity as such is distinctive in terms of physical characteristics or biological descent;

"(6) the term 'religious group' means a set of individuals whose identity as such is distinctive in terms of common religious creed, beliefs, doctrines, practices, or rituals; and

"(7) the term 'substantial part' means a part of a group of such numerical significance that the destruction or loss of that part would cause the destruction of the group as a viable entity within the nation of which such group is a part.".

~~(b) CLERICAL AMENDMENT.—The table of chapters at the beginning of part I of title 18, United States Code, is amended by inserting after the item relating to chapter 50 the following new item:~~

~~"50A. Genocide ..... 1091".~~

SECTION 1. SHORT TITLE.

This Act may be cited as the "Genocide Convention Implementation Act of 1987 (the Proxmire Act)".

SEC. 2. TITLE 18 AMENDMENTS.

(a) IN GENERAL.—Part I of title 18, United States Code, is amended by inserting after chapter 50 the following:

"CHAPTER 50A—GENOCIDE

"Sec.
1091. Genocide.
1092. Exclusive remedies.
1092. Definitions.

"§ 1091. Genocide

"(a) BASIC OFFENSE.—Whoever, whether in time of peace or in time of war, in a circumstance described in subsection (d) and with the specific intent to destroy, in whole or in substantial part, a national, ethnic, racial, or religious group as such—

"(1) kills members of that group;

"(2) causes serious bodily injury to members of that group;

"(3) causes the permanent impairment of the mental faculties of members of the group through drugs, torture, or similar techniques;

"(4) subjects the group to conditions of life that are intended to cause the physical destruction of the group in whole or in part;

"(5) imposes measures intended to prevent births within the group; or

"(6) transfers by force children of the group to another group;

or attempts to do so, shall be punished as provided in subsection (b).

"(b) PUNISHMENT FOR BASIC OFFENSE.—The punishment for an offense under subsection (a) is—

"(1) in the case of an offense under subsection (a)(1), a fine of not more than $1,000,000 and imprisonment for life; and

"(2) a fine of not more than $1,000,000 or imprisonment for not more than twenty years, or both, in any other case.

"(c) INCITEMENT OFFENSE.—Whoever in a circumstance described in subsection (d) directly and publicly incites another to violate subsection (a) shall be fined not more than $500,000 or imprisoned not more than five years, or both.

"(d) REQUIRED CIRCUMSTANCE FOR OFFENSES.—The circumstance referred to in subsections (a) and (c) is that—

"(1) the offense is committed within the United States; or

"(2) the alleged offender is a national of the United States (as defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101)).

"(e) NON-APPLICABILITY OF CERTAIN LIMITATIONS.—Notwithstanding section 3282 of this title, in the case of an offense under subsection (a)(1), an indictment may be found, or an information instituted, at any time without limitation.

"§ 1092. Exclusive remedies

"Nothing in this chapter shall be construed as precluding the application of State or local laws to the conduct proscribed by this chapter, nor shall anything in this chapter be construed as creating any substantive or procedural right enforceable by law by any party in any proceeding.

"§ 1093. Definitions

"As used in this chapter—

"(1) the term 'children' means the plural and means individuals who have not attained the age of eighteen years;

"(2) the term 'ethnic group' means a set of individuals whose identity as such is distinctive in terms of common cultural traditions or heritage;

"(3) the term 'incites' means urges another to engage imminently in conduct in circumstances under which there is a substantial likelihood of imminently causing such conduct;

"(4) the term 'members' means the plural;

"(5) the term 'national group' means a set of individuals whose identity as such is distinctive in terms of nationality or national origins;

"(6) the term 'racial group' means a set of individuals whose identity as such is distinctive in terms of physical characteristics or biological descent;

"(7) the term 'religious group' means a set of individuals whose identity as such is distinctive in terms of common religious creed, beliefs, doctrines, practices, or rituals; and

"(8) the term 'substantial part' means a part of a group of such numerical significance that the destruction or loss of that part would cause the destruction of the group as a viable entity within the nation of which such group is a part.".

(b) CLERICAL AMENDMENT.—The table of chapters at the beginning of part I of title 18, United States Code, is

amended by inserting after the item relating to chapter 50 the following new item:

"50A. Genocide..... 1091".

○